IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 147 of 2006
With
CIVIL APPLICATION No. 6807 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATIK MEDICINES
Versus
MUNICIPAL CORP.OF AHMEDABAD AND OTHERS

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Appearance :
MR MIHIR JOSHI with MR AMAR N BHATT for Appellant.
MR SB VAKIL with MR RM CHHAYA for Respondent No.1.
NOTICE SERVED BY DS for Respondent Nos. 2 - 10.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 29/11/2006

ORAL JUDGMENT

By filing this Appeal from Order under Order 43 of the Civil

Procedure Code, the appellant - original plaintiff of Civil Suit No.456/2004 has challenged the order passed by the learned trial Judge below Exh.6-7 by which the learned trial Judge has rejected the interim injunction application submitted by the plaintiff under Order 39 of the Civil Procedure Code.

The appellant-plaintiff has filed the aforesaid suit on the ground that the plaintiff is a partnership firm registered under the Partnership Act and that Sheth Vadilal Sarabhai General Hospital and Chinai Maternity Home are two separate public charitable trusts registered under the Bombay Public Trust Act. The aforesaid hospital belongs to defendant No.1–Ahmedabad Municipal Corporation but the management of said hospital is with defendant Nos.2 to 10, who are appointed on the Board of Management of the Hospital, which includes the trustees of Sheth Vadilal Sarabhai General Hospital and Chinai Maternity Home as well as the municipal councilors. It is the case of the plaintiff that the management of the hospital is mainly dominated by the municipal councilors and municipal authorities. The aforesaid hospital complex is having buildings, offices, wards as well as open plot. The aforesaid trust has leased out part of the open land admeasuring 13.9 feet by 14.9 feet, which is situated near the surgical ward of the hospital. The aforesaid open piece of land was leased out by fixing the monthly rent at Rs.16,500/-. It is the case of the plaintiff that the plaintiff was required to construct the shop over the said open land for which a lay out plan was given by the trust to the plaintiff. After obtaining lease and after making construction of the shop, the plaintiff has started its business of selling medicines at the said place. The land in question is situated in the hospital campus. It is not in dispute that the land belongs to the Municipal Corporation and the management of the hospital vests with the aforesaid Trust. The Ahmedabad Municipal Corporation served a

notice to the plaintiff under Section 260 (1) of the Bombay Provincial Municipal Corporation Act (herein after referred to as “Corporation Act” for short) stating that the plaintiff has carried out construction without submitting building plan and the plaintiff was asked to show cause as to why the said construction should not be demolished. It is the case of the plaintiff that the plaintiff had replied the said notice by giving all necessary information and details. After considering the reply of the plaintiff, the corporation wrote a letter to the plaintiff, by which the plaintiff was asked to submit the plans within seven days and accordingly, the plaintiff submitted necessary plans. Inspite of that defendant no.1 – Corporation had served a notice upon it on 28-7-2003 under Section 260 (2) of the Bombay Provincial Municipal Corporation Act asking the plaintiff to remove said structure, which is constructed unauthorizedly and without taking prior permission. It is the aforesaid notice under Section 260 (2) of the Act, which has given rise to the aforesaid suit.

By filing aforesaid suit, the plaintiff has prayed that the Honourable Court may be pleased to declare notice/order under Section 260 (2) as illegal, arbitrary and discriminatory and the same is required to be set aside.

In the aforesaid suit, the plaintiff has submitted an application under Order 39 of the Civil Procedure Code with a prayer to restrain the defendants from acting further on the basis of said notice.

Initially, learned trial Judge granted ad-interim injunction in favour of the plaintiff, however, after hearing both the sides, ultimately, learned trial Judge has rejected the prayer for interim injunction. Learned trial Judge has found that the plaintiff has failed to make out a

prima facie case and that he has failed to show that the alleged structure is legal and authorized structure. Learned trial Judge found that if the injunction is granted protecting such unauthorized construction, people will be tempted to raise illegal construction or unauthorized construction as per their choice. Learned trial Judge has accordingly rejected the injunction application vide his judgement and order dated 12-5-2006.

Being aggrieved by the aforesaid order of the learned trial Judge, the appellant – plaintiff has preferred this Appeal from Order under Order 43 of the Civil Procedure Code.

Mr.Mihir Joshi, learned Senior Counsel appearing for the appellant has vehemently argued that action of the corporation is arbitrary, mala fide and discriminatory. It is submitted by him that initially, the Board of Management of the trust had leased out the open piece of land to the present appellant on certain conditions and such lease was granted for a period of ten years, however, subsequently, the Board of trustees terminated said lease on the ground that the appellant has violated the terms of lease agreement and that the construction is carried out contrary to the rules and regulations and without getting prior permission for construction from the Corporation. The present appellant, therefore, filed a suit being Civil Suit No.1873/2003 challenging said action of the aforesaid trust by which the lease was terminated. In the said suit, an injunction application was pressed into service against the dispossession. Said injunction application was rejected by the trial Court and the prayer for injunction was also refused by this Court, against which the appellant herein had preferred Special Leave Petition before the Honourable Supreme Court being Special Leave to Appeal (Civil) No.2388-2389/2004. It is pointed out by both the learned advocates that said petitions were disposed of by the Honourable Supreme Court with a

direction that the appellant herein shall not be evicted without following the due process of law and such disposal of the petitions shall not affect the merits of the suit being Regular Civil Suit No.456/2004 (the suit in question), pending before City Civil Court, Ahmedabad. Accordingly, so far as earlier suit is concerned, the same was in connection with termination of lease, wherein the authority was permitted to act in accordance with law as per the judgement of the Supreme Court.

Mr.Joshi, learned Senior Counsel appearing for the appellant further submitted that in response to the notice under Section 260 (1) of the Act dated 12-5-2003, the appellant has already submitted necessary plans and that on 5th June, 2003, the Corporation had informed his client to clear certain queries raised in the aforesaid letter, which is produced at page 55 of the paper book. As per the said letter, the Corporation had raised 12 queries, one of which is whether the parking provisions for cars and visitor's parking is in accordance with GDCR, Clause No.19.1. There is also a query regarding violation of requirement of margin other than the road side as per GDCR, Clause No.12.4.1. The appellant was also informed that sanitary accommodation is not proposed as per GDCR, Clause No.17.9 (A). The appellant was also asked to furnish the original copy of Municipal Property Tax Clearance Certificate and original copy of Betterment Tax Clearance Certificate.

The plaintiff also gave its reply in response to the queries on 7-6-2003. Regarding the property tax, the plaintiff submitted that this being V.S.Hospital property, which is the property of the Corporation, without insisting for property tax, building plans may be sanctioned. The plaintiff also requested that betterment tax also may not be insisted upon as the property belongs to the Corporation. Regarding the query in connection with percolating well, the plaintiff requested that same may not be

insisted upon. Regarding sanitary provision and parking area, the plaintiff pointed out in its reply dated 7-6-2003 that the Commissioner has power to condone the said requirement, and, therefore, deficit parking area may be condoned and plaintiff may be given building permission. Said reply is finding place at page 56 of the paper book. After replying to the queries, the plaintiff has requested that without insisting for the aforesaid things, development plan may be sanctioned. It is not in dispute that the appellant – plaintiff could not satisfy the queries. Thereafter, the Corporation passed an order under Section 260 (2) of the Corporation Act.

It is submitted by Mr.Joshi that in response to the notice under Section 260 (1) of the Act, the appellant having submitted necessary plans, the appellant can be said to have complied with provisions of Section 260 (1) of the Corporation Act and, thereafter, it was not open to the Corporation to pass order under Section 260 (2) of the Corporation Act. He submitted that as per the original notice under Section 260 (1) of the Act, the appellant was required to submit necessary plans within seven days, which he did and, therefore, once the appellant having satisfied the notice under Section 260 (1) of the Act, there was no question of passing an order under Section 260 (2) for demolition of the structure in question. Mr.Joshi further submitted that the appellant has not been specifically informed that its building plans are rejected, therefore, according to him, by way of deeming fiction, it can be presumed that building plans are sanctioned and in that view of the matter, notice/order issued under Section 260 (2) of the Act can be said to be arbitrary, illegal and discriminatory. It is further submitted by Mr.Joshi that in any case, another adjoining occupier namely, AMJAY Medimix (I) Pvt. Ltd. is also permitted by the trust to put up the construction and it was permitted to run an MRI center on lease. When

the other occupier was permitted to put up the construction and when its plans were sanctioned, the appellant cannot be discriminated in the matter of giving the same type of treatment.

Mr.Joshi further submitted that the queries which were raised by the Corporation vide letter dated 5-6-2003 are irrelevant. So far as parking facility is concerned, it should be in connection with entire Vadilal Sarabhai Hospital complex, therefore, only for the sake of demolishing the construction of the appellant, aforesaid notice is issued to the appellant – plaintiff. Mr.Joshi further submitted that it is true that his client has put up the construction without submitting any building plans but the Corporation can rectify such plans subsequently by granting permission retrospectively. Mr.Joshi further submitted that even if there is a violation of building rules or plans, it is not mandatory that such structure must be demolished as the Corporation can rectify the action of the plaintiff by charging penalty and by sanctioning the plans by giving retrospective effect.

Mr.Joshi submitted that in view of the decision of the Honourable Supreme Court in **Syed Muazaffar Ali and Others Vs. Municipal Corporation of Delhi**, reported in **1995 Supp. (4) SCC 426**, even unauthorized construction can be compounded or regularized and that the authority should resort to demolition only in case of serious and grave breach of building regulations. Relying upon the said decision, it is further submitted by him that mere departure from the authorized plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. It is required to be noted that in the aforesaid decision the Honourable Supreme Court has held that some unauthorized construction are amenable to compounding and some may not be. There

may be cases of grave and serious breach of the licensing provisions or building regulations that may call for extreme step of demolition.

Mr.Joshi also submitted that in any case, when the plaintiff had already submitted the plans in response to the notice under Section 260 (1) of the Act and, subsequently, when the Corporation had not informed it that its building plans are rejected, it can be presumed that the plans are sanctioned and that notice under Section 260 (1) of the Act can be said to have been waived by the Corporation. It is submitted that in any case, similar treatment was required to be given to the plaintiff as has been given to AMJAY Medimix (I) Pvt. Ltd., as according to Mr.Joshi, plans of aforesaid AMJAY Medimix (I) Pvt. Ltd. were rightly sanctioned by the Corporation.

Mr.Joshi further submitted that in any case, having taken the scrutiny fee for scrutinizing the plans submitted by the plaintiff, it is not open to the Corporation to pass further order under Section 260 (2) of the Act, as the plaintiff can be said to have complied with the notice under Section 260 (1) of the Act. It is also submitted that subsequent act of the Corporation by which the scrutiny fees was taken for scrutinizing the plans, itself, shows that the notice in question is waived by the Corporation. It is further submitted by him that, in any case, the Corporation is estopped from taking any action for removing unauthorized construction carried out by the plaintiff as they have acted contrary in the case of AMJAY Medimix (I) Pvt. Ltd. It is, therefore, submitted that during the pendency of the suit, injunction is required to be granted restraining the Corporation from demolishing the superstructure erected by the plaintiff. He submitted that he is not in a position to point out whether any exemption is available to the appellant from the provisions of the Corporation Act or the rules and regulations

framed by the Corporation, in the matter of submission of building plans on the ground that the property in question belongs to the Municipal Corporation.

On the other hand, learned Senior Counsel Mr.S.B.Vakil appearing for Mr.R.M.Chhaya for the Municipal Corporation submitted that the plaintiff was required to take prior permission and unless the plans were sanctioned by the Corporation it was not open to the plaintiff to complete the construction by taking law in its hand. It is submitted that even the trust itself has terminated the lease and as per the order of the Honourable Supreme Court the Trust was permitted to take appropriate proceedings in accordance with law before evicting the appellant herein from the premises in question. It is submitted by Mr.Vakil that on termination of lease status of the appellant can be said to be that of a trespasser, who can be evicted by following due process of law. Mr.Vakil further submitted that the premises in question belongs to the Corporation and the management of it vests with the Trust, but the Trust granted lease without inviting any tenders or giving any advertisement and that too without taking prior permission of the Charity Commissioner, which is required to be taken under the Bombay Public Trusts Act. Mr.Vakil further submitted that so far as the Corporation is concerned, the Corporation was required to see whether the construction is carried out as per the building plans and if there is any violation of rules in that behalf, the Corporation was required to act in accordance with law. Mr.Vakil further submitted that even if the concerned Trust might have acted contrary to the rules and regulations or even if the building plans are wrongly sanctioned in favour of AMJAY Medimix (I) Pvt. Ltd., that is no ground, which may be available to the appellant for getting discretionary order under Order 39 of the Civil Procedure Code. Mr.Vakil has submitted that he has informed his client to take

appropriate proceedings in accordance with law even against AMJAY Medimix (I) Pvt. Ltd. or any other erring party. He submitted that even if any irregularity is committed in other case, the plaintiff cannot take benefit of it by invoking Article 14 of the Constitution of India, as the appellant cannot plead reverse discrimination. Mr.Vakil also pointed out that in view of authorization given by the Corporation, concerned officer has issued the aforesaid notice to the appellant. Mr.Vakil further submitted that in response to the notice under Section 260 (1) of the Act, the appellant had submitted its plans and scrutiny fee was taken from it as per the rules but the appellant was asked to satisfy certain queries, which admittedly, are not satisfied by the appellant and on that ground order under Section 260 (2) was passed. It is submitted that when it is not in dispute that construction was carried out without taking any permission, the appellant cannot say that the Corporation must sanction the plans and must rectify the construction carried out by the appellant unauthorizedly. It is submitted by Mr.Vakil that even by deeming fiction only those plans can be said to have been sanctioned, which can be sanctioned legally and not otherwise. It is submitted by Mr.Vakil that it was not obligatory on the part of the Corporation to inform the appellant that its building plans are rejected. He submitted that the Corporation has never informed the appellant that its plans are sanctioned and when the appellant has admittedly not complied with the queries raised by letter dated 5-6-2003, an order under Section 260 (2) of the Act is passed and no fault can be found with such order.

I have heard both the learned advocates and I have gone through the voluminous documentary evidence produced on record. It is required to be noted that Sheth Vadilal Sarabhai General Hospital and Chinai Maternity Home Trusts had obliged the appellant and AMJAY Medimix (I) Pvt. Ltd. by giving them lease of the open plot of land for a period of

ten years by charging certain amount, however, such lease was subsequently terminated and, for taking the possession, the trust was required to follow due process of law. So far as Corporation is concerned, it is a separate body altogether, which is constituted under the Bombay Provincial Municipal Corporation Act. It is not in dispute that before erecting any construction in the disputed land, permission was required to be taken by the appellant. It is no doubt true that, in a given case, Corporation may give permission subsequently by regularizing such construction but so far as facts of the present case are concerned, it cannot be said that Corporation has acted contrary to law by enforcing statutory provisions contained under Section 260 of the Bombay Provincial Municipal Corporation Act. In this behalf certain provisions of the Bombay Provincial Municipal Corporation Act are required to be referred to, which are as under :

> "**Section 253. Notice to be given to Commissioner of intention to erect building.**
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> (1) Every person who shall intent to erect a building shall give to the Commissioner notice of his said intention in the form prescribed in the by-laws and containing all such information as may be required to be furnished under the by-laws.
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> (2) Every such notice shall be signed in the manner prescribed in the by-laws and shall be accompanied by such documents and plans as may be so prescribed.
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> (3) In this Chapter the expression "to erect a building" means -
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> (a) newly to erect a building on any site whether previously

built upon or not,

(b) to re-erect -

(i) any building of which more than one-half of the cubical contents of the building above the level of the plinth have been pulled down, burnt, or destroyed,

(ii) any masonry building of which more than three -fourths of the superficial area of the external walls above the level of the plinth has been pulled down, or

(iii) any frame building of which more than three quarters of the number of the posts or beams in the external walls have been pulled down,

(c) to convert into a dwelling house any building or part of a building not originally constructed for human habitation or, if originally so constructed, appropriated for any other purpose,

(d) to convert into more than one dwelling house a building originally constructed as one dwelling house only,

(e) to convert by any structural alteration into a place of religious worship or into a sacred building any place or building not originally meant or constructed for such purpose,

(f) to roof or cover an open space between walls or buildings as regards the structure which is formed by roofing or covering

such space,

(g) to convert by a structural alteration two or more tenements in a building into a greater or lesser number,

(h) to make any structural alteration in a building so as to affect its drainage or sanitary arrangements or its stability,

(i) to convert into a stall, shop, warehouse or godown any building not originally constructed for use as such, or

(j) to construct in a wall adjoining any street or land not vested in the owner of the wall, a door opening on such street or land,

and each of the above operations shall be deemed to be the erection of new building for the purposes of this Chapter.

Section 254. Notice to be given to Commissioner of intention to make additions, etc. to building.

(1) Every person who shall intend -

(a) to make any addition to a building,

(b) to make any alteration or repairs to a building, not being a frame-building, involving the removal or re-erection of any external or party-wall thereof or of any wall which supports the roof thereof, to an extent exceeding one-half of such wall above the plinth level, such half to be measured in

superficial feet,

(c) to make any alteration or repairs to a frame-building, involving the removal or re-erection of more than one-half of the posts or beams in any such wall thereof as aforesaid, or involving the removal or re-erection of any such wall thereof as aforesaid to an extent exceeding one-half of such wall above plinth level, such half to be measured in superficial feet,

(d) to make any alteration in a building involving -

(i) the sub-division of any room in such building so as to convert the same into two or more separate rooms, or

(ii) the conversion of any passage or space in such building into a room or rooms,

(e) to repair, remove, construct, re-construct or add to any portion of a building abutting on a street which stands within the regular line of such street,

(f) to carry out any work in a building involving -

(i) the construction or reconstruction of a roof,
(ii) the conversion of a roof into a terrace,
(iii) the conversion of a terrace into a roof, or
(iv) the construction of a lift shaft.

(g) to carry out any repairs to a building involving the

construction of a floor of a room (excluding the ground floor),

(h) to permanently close any door or window in an external wall, or

(i) to remove or reconstruct the principal staircase or to alter its position,

shall give notice to the Commissioner, in the form prescribed in the by-laws and containing all such information as may be required to be furnished under the by-laws.

(2) Every such notice shall be signed in the manner prescribed in the by-laws and shall be accompanied by such documents and plans as may be so prescribed.

Section 260. Proceedings to be taken in respect of building or work commenced contrary to rules or by-laws.

(1) If the erection of any building or the execution of any such work as is described in section 254 is commenced or carried out contrary to the provisions of the rules or by-laws, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under section 264, shall -

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed

by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person."

Reference is also required to be made to General Development Control Regulations framed by the Ahmedabad Urban Development Authority. Relevant Regulation 5.6 of the aforesaid regulations reads as under :

"5.6 DEVELOPMENT WITHOUT PRIOR LEGITIMATE PERMISSION :

In cases where development has already started/commenced on site for which development permission in writing of the Competent Authority is not obtained, but where this development on site is in accordance with the provisions of these regulations, the development permission for such work on site without the

prior permission may be granted by the Competent Authority on the merits of each individual case. For such development works, over and above such other charges/fees may be otherwise leviable, the additional amount shall be charged on such total built up area as per the following rates :

1	Application for development permission is made but development is commenced as per submitted plan.	5 times of regulation No.3.2.1 to 3.2.4
2	Application is made but development has been commenced but not as per submitted plan.	10 times of regulation No.3.2.1 to 3.2.4
3	Application for development permission is not made and development is commenced.	15 times of regulation No.3.2.1 to 3.2.4
4	All other open uses including layout and sub-division of land.	2 times of regulation No.3.2.1 to 3.2.4.

As submitted by Mr.Vakil that as per the notice/order under Section 260 (2) of the Act, the Corporation is required to demolish the unauthorized construction and so far as physical possession of the disputed land is concerned, the Corporation has nothing to do with it as it is for the Trust to take appropriate action in accordance with law. Therefore, in the present proceedings, the Court is concerned only with the question whether the Corporation is entitled to proceed under Section 260 of the Act for demolishing the unauthorized construction,

which can be said to have been carried out without submitting building plans or getting the building plans sanctioned.

In the instant case, it is not in dispute that the appellant – plaintiff has carried out entire construction without submitting any building plans at all. Subsequently, in response to the notice under Section 260 (1) of the Act, building plans were submitted and scrutiny fee was also paid. However, in my view, simply because the scrutiny fee was accepted by the Corporation, it cannot be presumed that the building plans are sanctioned by the Corporation. As per the aforesaid provisions, in a given case, if the development has started and subsequently the building plans are submitted, the authority may grant such permission if it is found that such development or construction is permissible as per law. In the instant case, no permission has been granted for construction, especially in the open space, which is meant for passing for pedestrians and traffic and other vehicles for reaching at the hospital and various wards.

As stated earlier, it is not in dispute that without the building plans being submitted or sanctioned, the construction could not have been carried out. It is also not in dispute that the building rules and regulations are applicable in connection with the present premises. Apart from that after completing the construction, the appellant was given an opportunity by the Corporation to submit the plan. While giving notice under Section 260 (1) of the Corporation Act, the appellant was permitted to submit plans within a period of seven days. In response to notice under Section 260 (1) of the Act, the appellant gave reply on 14th May, 2003. Thereafter, the Corporation gave one more opportunity to the appellant by asking it to submit plans by letter dated 29th May, 2003. Therefore, it can be said that the Corporation has taken charitable view of the matter by giving opportunity to the appellant and the Corporation

has not proceeded straightway for demolishing the construction under Section 260 of the Corporation Act. In my view, therefore, by giving that opportunity, it cannot be said that the notice under Section 260 (1) of the Act is waived by the Corporation or the Corporation is estopped from taking further action in accordance with law, simply because the scrutiny fee was accepted for scrutinizing the plans.

As noted earlier, thereafter, certain queries were raised by the Corporation and the appellant could not give any satisfactory reply to the same and since the appellant could not satisfy the queries, further oder under Section 260 (2) of the Act is passed. Simply because some favourable treatment was given in other case, cannot give any right to the appellant to continue to violate the building bye-laws and regulations. In that view of the matter, no fault can be found with the action of the Corporation under Section 260 (2) of the Act.

At this stage, Mr.Joshi, submitted that the queries raised by the Corporation were irrelevant and such queries were not raised in other cases. In my view, said aspect is besides the point. It is required to be noted that even till today the appellant is not in a position to satisfy any of the queries raised by the Corporation. The building rules and regulations are meant for its compliance and, in a given case, even if building plans are submitted subsequently, Corporation may grant the same. In the same way, if no decision is taken within the stipulated time on the plans submitted, it can be said to have been granted by deeming fiction, however, the construction which can be regularized as per law can only be regularized by deeming fiction and not otherwise. In fact, Mr.Joshi has also pointed out that his client had applied for sanctioning the building plan on its own after completing the construction. Here entire construction was completed before submitting the plans, yet the

Corporation has permitted the appellant to submit plans, after giving notice under Section 260 (1) of the Act. But if the construction is contrary to the building rules and plans, the Corporation cannot be restrained from acting in accordance with law or prevented from demolishing the construction in question.

As pointed out earlier, in the instant case, the trust leased out open land in the hospital complex and as pointed out by Mr.Vakil, if adequate parking facilities are not there, it is bound to create inconvenience and nuisance to the public at large as large number of people are visiting the hospital everyday. When it is not in dispute that building permission is required to be taken before making any construction and when even subsequently, the plans submitted by the appellant are not found to be in consonance with the rules and regulations, and on that basis if the authority has taken action for demolishing the unauthorized construction and after considering the aforesaid aspect if the trial Court has not exercised its discretion under Order 39 of the Civil Procedure Code by not granting injunction, in my view, this Court would not like to interfere with such a discretionary order of the trial Court in this Appeal from Order.

In this connection reference is required to be made to the decision of the this Court in **Mardia Chemicals Limited v. Gujarat Electricity Board & Anr.**, reported in **2002 (2) GLR 1480**, wherein it is held that discretion exercised by the trial Court in the matter of interim injunction, normally is not required to be interfered with by the appellate Court unless the order is perverse or is passed against the settled principles of law. None of such eventuality is present in this case, therefore, the Corporation cannot be prevented from taking action in accordance with law, when the Corporation is entitled to enforce the building rules and

regulations.

Considering the aforesaid aspect of the matter, it cannot be said that the trial Court has committed any error in not granting injunction against the decision of the Corporation under Section 260 (2) of the Corporation Act. I do not find any substance in the argument of Mr.Joshi that, without waiting for seven days as mentioned in its letter, the Corporation has passed order under Section 260 (2) of the Act. When the Corporation has already informed the appellant about certain queries, which it could not comply with, it was not necessary for the Corporation to wait, especially, when it is not in dispute that the appellant is not in a position even to comply with any of the queries raised by the Corporation in the aforesaid letter dated 5-6-2003. It is not possible for this Court to agree with the submission of Mr.Joshi that notice under Section 260 (1) can be said to have been waived, in view of the subsequent letter of the Corporation asking the appellant to submit the plans. If, ultimately, it was found that the plans were in accordance with law, naturally, Corporation was required to pass appropriate order sanctioning the plans but in a civil suit filed by the appellant-plaintiff, the Court cannot ask the Corporation to sanction the plan if the same is not in consonance with the provisions of the Corporation Act and building regulations.

Considering the aforesaid aspect of the matter, the trial Court was justified in refusing interim injunction. Therefore, the said order of the trial Court is not required to be interfered with by this Court and this Court cannot prevent the Corporation from acting in accordance with law. It is, however, clarified that so far as action of the Municipal Corporation is concerned, the same should be confined only in connection with demolition of unauthorized construction. So far as

physical possession of the land is concerned, the Corporation cannot evict the appellant from the same and as rightly pointed out by Mr.Vakil, Corporation is not interested in evicting the plaintiff and it is interested in removal of unauthorized construction and not beyond the same.

So far as eviction of the appellant-plaintiff is concerned, in view of the order of the Apex Court, in case the plaintiff is required to be evicted, it may be evicted after following due process of law and, the present proceedings should be construed only in connection with removal of unauthorized construction and not beyond that.

It is required to be noted that simply because the trust had asked the plaintiff to carry out the construction as per the sketch, can never be said to be a ground favourable to the plaintiff, as the construction was required to be carried out as per the rules and regulations and as per the provisions of Corporation Act. So far as question about sanctioning building plans are concerned, it rests with the Municipal Corporation as per the provisions of the Corporation Act and regulations. The appellant is also aware of the said aspect and, therefore, it had also submitted building plans to the Corporation after paying scrutiny fee. Therefore, it is not possible to accept the say of Mr.Joshi that the sketch was given by the Trust and on that basis the appellant carried out the construction.

Considering the aforesaid aspect of the matter, in my view, it cannot be said that the trial Court has exercised its discretion arbitrarily or contrary to law. Considering the facts and circumstances of the case, in my view, no interference of this Court is called for against an interlocutory order passed by the trial Court. Therefore, I do not find any substance in this appeal and the same is dismissed. Notice is discharged with no order as to costs.

In view of above order, no order on Civil Application No.6807/2006.

At this stage, Mr.Joshi requested that since the appellant would like to approach the Honourable Supreme Court, injunction order granted earlier may be continued for some time.

In view of the request of Mr.Joshi, ad-interim relief granted earlier in this matter is ordered to be continued till 15th December, 2006.

(P.B.Majmudar, J.)

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